

[First Reprint]

**ASSEMBLY, No. 4953**

**STATE OF NEW JERSEY**  
**221st LEGISLATURE**

INTRODUCED OCTOBER 17, 2024

**Sponsored by:**

**Assemblyman ROY FREIMAN**

**District 16 (Hunterdon, Mercer, Middlesex and Somerset)**

**SYNOPSIS**

“Patient and Provider Protection Act.”

**CURRENT VERSION OF TEXT**

As amended but not reported by the Assembly Financial Institutions and Insurance Committee on December 9, 2024.



1 AN ACT concerning pharmacy benefits managers, amending  
2 P.L.2023, c.107, <sup>1</sup>and amending<sup>1</sup> and supplementing P.L.2015,  
3 c.179 (C.17B:27F-1 et seq.).  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:  
7

8 1. Section 7 of P.L.2023, c.107 (C.17B:27F-3.3) is amended to  
9 read as follows:

10 7. a. A carrier, or a pharmacy benefits manager under contract  
11 with a carrier, shall establish a pharmacy and therapeutics  
12 committee responsible for managing the formulary system.

13 b. A carrier, or a pharmacy benefits manager under contract  
14 with a carrier, shall not allow a person with a conflict of interest to  
15 be a member of its pharmacy and therapeutics committee.

16 A carrier, or a pharmacy benefits manager under contract with a  
17 carrier, shall require that its pharmacy and therapeutics committee  
18 meet the requirements for conflict of interest as set by the Centers  
19 for Medicare and Medicaid Services or meets the accreditation  
20 standards of the National Committee for Quality Assurance or  
21 another independent accrediting organization.

22 c. A pharmacy and therapeutics committee shall ensure that no  
23 decision concerning the inclusion of a prescription drug in a  
24 formulary system, or in a particular tier of the formulary system,  
25 places a prescription drug with a higher cost in a more favorable  
26 position than a generic or biosimilar prescription drug with a lower  
27 cost.

28 (cf: P.L.2023, c.107, s.7)  
29

30 2. Section 9 of P.L.2023, c.107 (C.17B:27F-3.4) is amended to  
31 read as follows:

32 9. a. If a carrier uses a pharmacy benefits manager to administer  
33 or manage the prescription drug benefits of covered persons, any  
34 pharmacy benefits manager compensation, for purposes of  
35 calculating a carrier's anticipated loss ratio or any loss ratio  
36 calculated as part of any applicable medical loss ratio filing or rate  
37 filing, shall:

38 (1) constitute an administrative cost incurred by the carrier in  
39 connection with a health benefits plan; and

40 (2) not constitute a benefit provided under a health benefits plan.  
41 A carrier shall claim only the amounts paid by the pharmacy  
42 benefits manager to a pharmacy or pharmacist as an incurred claim.

43 b. Any rate filing submitted by a carrier with respect to a health  
44 benefits plan that provides coverage for prescription drugs or

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AFI committee amendments adopted December 9, 2024.

1 pharmacy services and that is administered or managed by a  
2 pharmacy benefits manager shall include:

3 (1) a memorandum prepared by a qualified actuary describing the  
4 calculation of the pharmacy benefits manager compensation; and

5 (2) any records and supporting information as the department  
6 reasonably determines is necessary to confirm the calculation of the  
7 pharmacy benefits manager compensation.

8 c. Upon request, a carrier shall provide any records to the  
9 department that relate to the calculation of the pharmacy benefits  
10 manager and pharmacy services administrative organization  
11 compensation.

12 d. A pharmacy benefits manager and pharmacy services  
13 administrative organization shall provide any necessary  
14 documentation requested by a carrier that relates to pharmacy  
15 benefits manager compensation in order to comply with the  
16 requirements of this section.

17 e. Compensation to a pharmacy benefits manager shall be in a  
18 flat fee arrangement. No pharmacy benefits manager shall receive  
19 compensation in any form of commission structure.

20 <sup>1</sup>f. Upon request by the department or a purchaser, a pharmacy  
21 benefits manager shall disclose to the department or purchaser the  
22 amount of any fees paid by the pharmacy benefits manager to a  
23 third party broker.<sup>1</sup>

24 (cf: P.L.2023, c.107, s.9)

25

26 3. Section 1 of P.L.2015, c.179 (C.17B:27F-1) is amended to  
27 read as follows:

28 1. As used in P.L.2015, c.179 (C.17B:27F-1 et seq.):

29 "Anticipated loss ratio" means the ratio of the present value of  
30 the future benefits payments, including claim offsets after the point  
31 of sale, to the present value of the future premiums of a policy form  
32 over the entire period for which rates are computed to provide  
33 health insurance coverage.

34 "Average wholesale price" means the average wholesale price of  
35 a prescription drug determined by a national drug pricing publisher  
36 selected by a carrier. The average wholesale price shall be  
37 identified using the national drug code published by the National  
38 Drug Code Directory within the United States Food and Drug  
39 Administration.

40 "Brand-name drug" means a prescription drug marketed under a  
41 proprietary name or registered trademark name, including a  
42 biological product.

43 "Carrier" means an insurance company, health service  
44 corporation, hospital service corporation, medical service  
45 corporation, or health maintenance organization authorized to issue  
46 health benefits plans in this State.

47 "Contracted pharmacy" means a pharmacy that participates in the  
48 network of a pharmacy benefits manager through a contract with:

- 1 a. the pharmacy benefits manager directly;
- 2 b. a pharmacy services administration organization; or
- 3 c. a pharmacy group purchasing organization.

4 "Cost-sharing amount" means the amount paid by a covered  
5 person as required under the covered person's health benefits plan  
6 for a prescription drug at the point of sale.

7 "Covered person" means a person on whose behalf a carrier or  
8 other entity, who is the sponsor of the health benefits plan, is  
9 obligated to pay benefits pursuant to a health benefits plan.

10 "Department" means the Department of Banking and Insurance.

11 "Drug" means a drug or device as defined in R.S.24:1-1.

12 "Health benefits plan" means a benefits plan which pays hospital  
13 or medical expense benefits for covered services, or prescription  
14 drug benefits for covered services, and is delivered or issued for  
15 delivery in this State by or through a carrier or any other sponsor.  
16 For the purposes of P.L.2015, c.179 (C.17B:27F-1), health benefits  
17 plan shall not include the following plans, policies or contracts:  
18 accident only, credit disability, long-term care, Medicare  
19 supplement coverage; TRICARE supplement coverage, coverage  
20 for Medicare services pursuant to a contract with the United States  
21 government, the State Medicaid program established pursuant to  
22 P.L.1968, c.413 (C.30:4D-1 et seq.), coverage arising out of a  
23 worker's compensation or similar law, the State Health Benefits  
24 Program, the School Employees' Health Benefits Program, or <sup>1</sup>[a  
25 self-insured health benefits plan governed by the provisions of the  
26 federal "Employee Retirement Income Security Act of 1974," 29  
27 U.S.C. s.1001 et seq.,]<sup>1</sup> coverage under a policy of private  
28 passenger automobile insurance issued pursuant to P.L.1972, c.70  
29 (C.39:6A-1 et seq.), or hospital confinement indemnity coverage.

30 "Maximum allowable cost" means the maximum amount a health  
31 insurer will pay for a generic drug or brand-name drug that has at  
32 least one generic alternative available.

33 "Network pharmacy" means a licensed retail pharmacy or other  
34 pharmacy provider that contracts with a pharmacy benefits manager  
35 either directly or by and through a contract with a pharmacy  
36 services administrative organization.

37 "Pharmacy" means any place in the State, either physical or  
38 electronic, where drugs are dispensed or pharmaceutical care is  
39 provided by a licensed pharmacist, but shall not include a medical  
40 office under the control of a licensed physician.

41 "Pharmacy benefits manager" means a corporation, business, or  
42 other entity, or unit within a corporation, business, or other entity,  
43 that, pursuant to a contract or under an employment relationship  
44 with a carrier, a self-insurance plan or other third-party payer, either  
45 directly or through an intermediary, administers prescription drug  
46 benefits on behalf of a purchaser.

47 "Pharmacy benefits manager compensation" means the  
48 difference between: (1) the amount of payments made by a carrier

1 of a health benefits plan to its pharmacy benefits manager; and (2)  
2 the value of payments made by the pharmacy benefits manager to  
3 dispensing pharmacists for the provision of prescription drugs or  
4 pharmacy services with regard to pharmacy benefits covered by the  
5 health benefits plan.

6 "Pharmacy benefits management services" means the provision  
7 of any of the following services on behalf of a purchaser: the  
8 procurement of prescription drugs at a negotiated rate for  
9 dispensation within this State; the processing of prescription drug  
10 claims; or the administration of payments related to prescription  
11 drug claims.

12 "Pharmacy services administrative organization" means an entity  
13 operating within the State that contracts with independent  
14 pharmacies to conduct business on their behalf with third-party  
15 payers.

16 "Prescription" means a prescription as defined in section 5 of  
17 P.L.1977, c.240 (C.24:6E-4).

18 "Prescription drug benefits" means the benefits provided for  
19 prescription drugs and pharmacy services for covered services  
20 under a health benefits plan contract.

21 "Purchaser" means any sponsor of a health benefits plan who  
22 enters into an agreement with a pharmacy benefits management  
23 company for the provision of pharmacy benefits management  
24 services to covered persons.

25 (cf: P.L.2023, c.107, s.1)

26

27 <sup>1</sup>~~3~~ 4.1 (New section) a. A pharmacy benefits manager shall  
28 have a fiduciary duty to the long term health outcomes of covered  
29 persons.

30 b. A pharmacy benefits manager shall not engage in any  
31 marketing activity that uses inaccurate or misleading information to  
32 convince or attempt to convince covered persons to use a contracted  
33 or network pharmacy.

34

35 <sup>1</sup>~~4.~~ 5.1 (New section) An agreement between a pharmacy  
36 benefits manager and a manufacturer shall not be valid if the  
37 contract conditions any rebate on the exclusion of generic drugs  
38 from coverage.

39

40 <sup>1</sup>~~5.~~ 6.1 (New section) a. A contract between a pharmacy  
41 benefits manager and a contracted pharmacy or network pharmacy  
42 shall, in the event of a dispute, be presumed to be a "contract of  
43 adhesion."

44 b. A pharmacy benefits manager shall, for a prescription drug,  
45 reimburse:

46 (1) a contracted pharmacy or a network pharmacy at a rate that is  
47 at least equal to the pharmacy's cost of acquiring the prescription drug;  
48 and

1 (2) an <sup>1</sup>**independent** unaffiliated<sup>1</sup> pharmacy at a rate that is up to  
2 five percent lower than the lowest reimbursement rate provided to a  
3 contracted pharmacy or a network pharmacy, but shall not reimburse  
4 an <sup>1</sup>**independent** unaffiliated<sup>1</sup> pharmacy at a rate that is less than the  
5 pharmacy's cost of acquiring the prescription drug.

6 c. A pharmacy benefits manager shall not prohibit an  
7 <sup>1</sup>**independent** unaffiliated<sup>1</sup> pharmacy from offering a prescription  
8 drug to a covered person in the same quantity and at the same price as  
9 a contracted pharmacy or a network pharmacy.

10 <sup>1</sup>**d.** As used in this section, "independent pharmacy" means a  
11 pharmacy that is not a contracted pharmacy or a network pharmacy. <sup>1</sup>

12

13 <sup>1</sup>**[6.] 7.**<sup>1</sup> This act shall take effect on the first day of the  
14 seventh month next following the date of enactment and shall apply  
15 to contracts and agreements entered into, renewed, modified, or  
16 amended on or after the effective date, but the Commissioner of  
17 Banking and Insurance may take such anticipatory administrative  
18 action in advance thereof as shall be necessary for the  
19 implementation of the act.